

REMARKS/ARGUMENTS

Claims 1 and 11-27 remain pending herein. Claims 14, 16 and 19-27 have been withdrawn from consideration by the U.S. Patent and Trademark Office.

The Applicants hereby confirm their election of "general species" 1 and "additional species" A.

Claim 11 was rejected under 35 U.S.C. §112, second paragraph. The U.S. Patent and Trademark Office appears to have overlooked the fact that the subscripted numbers immediately following "Ni" and "Ti" respectively are the *products* of (X_1 times Z) and (X_2 times Z). Claim 11 has been amended to show each of X_1 , X_2 and Z in each instance. Claim 11, amended as set forth above, covers the *exact same* subject matter as claim 11 set forth in the Preliminary Amendment filed March 13, 2002, i.e., claim 11 has been amended merely to make express what had been implicit in the claim as previously worded.

It is respectfully requested that the U.S. Patent and Trademark Office reconsider and withdraw this rejection.

Claims 1, 12, 13, 15, 17 and 18 were rejected under obviousness-type double patenting over claims 1-3, 5, 7 and 8 of U.S. Patent No. 6,368,750 (Nemoto '750). Claims 1-3, 5, 7 and 8 do not disclose or suggest a negative active material including carbon. It is respectfully requested that the U.S. Patent and Trademark Office reconsider and withdraw this rejection.

Claims 1, 11-13, 15, 17 and 18 were rejected under 35 U.S.C. §102(e) over U.S. Patent No. 6,040,089.

Claim 1 has been amended as set forth above to recite that the claimed battery comprises a negative active material including carbon. Manev '089 fails to disclose or suggest a negative active material including carbon.

Accordingly, Manev '089 does not anticipate any of claims 1, 11-13, 15, 17 and 18. It is therefore respectfully requested that the U.S. Patent and Trademark Office reconsider and withdraw this rejection.

In addition, the subject matter of claims 1, 11-13, 15, 17 and 18 would not have been obvious in view of Manev '089.

Claim 1, from which each of claims 11-13, 15, 17 and 18 ultimately depend, recites a positive active material including a lithium transition metal compound including nickel and titanium. Manev '089 discloses a codopant combination of cobalt and titanium, and

characterizes that combination as a preferred embodiment. The examples according to Manev '089 set forth in the patent both include a codopant combination of cobalt and titanium, not nickel and titanium. In Manev '089, column 4, lines 41-62, there is a statement that although the cobalt and titanium codopant combination is preferred, various other combinations can be used. Among a long list of such "other combinations" is "nickel/titanium". Manev '089 contains no disclosure which would lead one of skill in the art to the selection of nickel and titanium as a codopant combination from within the extensive list of combinations set forth in Manev '089, column 4, lines 41-62.

In addition, submitted herewith is a Declaration under 37 C.F.R. 1.132 which reports the results of comparative tests which demonstrate that batteries which contain a positive active material as recited in the present claims, i.e., which include nickel and titanium, achieved unexpectedly low internal resistance in comparison with batteries which contain a positive active material including other combinations of materials, including cobalt/titanium described as the preferred codopant combination in Manev '089.

In view of the above, claims 1, 11-13, 15, 17 and 18 are in condition for allowance.

If the Examiner believes that contact with Applicants' attorney would be advantageous toward the disposition of this case, the Examiner is herein requested to call Applicants' attorney at the phone number noted below.

The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-1446.

Respectfully submitted,

December 24, 2003

Date

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KCB:jms

Enclosures: Declaration Under 37 C.F.R. §1.132

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